

HONORABLE RICHARD A. JONES
HONORABLE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTEGRATIVE HEALTH INSTITUTE
PLLC d/b/a SOPHIA HEALTH INSTITUTE,
a Washington professional limited liability
Company; SOPHIA NUTRITION, LLC, a
Washington limited liability company;
SOPHIA EDUCATION, LLC, a Washington
limited liability company; KS
DISTRIBUTORS LLC, a Washington limited
liability company; DIETRICH
KLINGHARDT, an individual,

Plaintiffs,

v.

CHRISTINE SCHAFFNER and DANIEL
SCHAFFNER, as individuals and the marital
community thereof; BELLA FIORE KLINIK,
PLLC, a Washington professional limited
liability company; BELLA FIORE
ORGANIC SKIN CARE, LLC, a Washington
limited liability company; BELLA FIORE
ORGANICS, LLC, a Washington limited
liability company,

Defendants.

Case No. C20-1471-RAJ-MLP

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, Defendants hereby petition the court to enter the following Protective Order. Defendants acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged: documents containing non-public and private, personal information, including documents containing personal financial information; or documents that describe, contain or disclose internal company information, including commercial or financial information including proprietary information, highly sensitive financial information, prospective business or competitive strategies, documents that describe, contain or disclose internal company information including information incorporating proprietary data, know-how, trade secrets, or other valuable commercial information, or material that is held confidential within the company and restricted from outside disclosure or subject to internal controls, the unrestricted disclosure of which to another party or third party could provide that party or third party with an unfair competitive advantage over the designating party or could cause significant, irreparable injury to the designating party that cannot be avoided by less restrictive means, and documents and other information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

1 3. SCOPE

2 The protections conferred by this agreement cover not only confidential material (as
3 defined above), but also (1) any information copied or extracted from confidential material;
4 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
5 testimony, conversations, or presentations by parties or their counsel that might reveal
6 confidential material.

7 However, the protections conferred by this agreement do not cover information that is
8 in the public domain or becomes part of the public domain through trial or otherwise.

9 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

10 4.1 Basic Principles. A receiving party may use confidential material that is
11 disclosed or produced by another party or by a non-party in connection with this case only
12 for prosecuting, defending, or attempting to settle this litigation. Confidential material may
13 be disclosed only to the categories of persons and under the conditions described in this
14 agreement. Confidential material must be stored and maintained by a receiving party at a
15 location and in a secure manner that ensures that access is limited to the persons authorized
16 under this agreement.

17 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
18 ordered by the court or permitted in writing by the designating party, a receiving party may
19 disclose any Confidential material only to:

20 (a) the receiving party's counsel of record in this action, as well as employees
21 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

22 (b) the officers, directors, and employees (including in house counsel) of the
23 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
24 agree that a particular document or material produced is for Attorney's Eyes Only and is so
25 designated;

1 (c) experts and consultants to whom disclosure is reasonably necessary for this
2 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court, court personnel, and court reporters and their staff;

4 (e) copy or imaging services retained by counsel to assist in the duplication of
5 confidential material, provided that counsel for the party retaining the copy or imaging service
6 instructs the service not to disclose any confidential material to third parties and to immediately
7 return all originals and copies of any confidential material;

8 (f) during their depositions, witnesses in the action to whom disclosure is
9 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
10 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
11 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
12 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
13 under this agreement;

14 (g) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information.

16 4.3 Filing Confidential Material. Before filing confidential material or discussing
17 or referencing such material in court filings, the filing party shall confer with the designating
18 party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating
19 party will remove the confidential designation, whether the document can be redacted, or
20 whether a motion to seal or stipulation and proposed order is warranted. During the meet and
21 confer process, the designating party must identify the basis for sealing the specific
22 confidential information at issue, and the filing party shall include this basis in its motion to
23 seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets
24 forth the procedures that must be followed and the standards that will be applied when a
25 party seeks permission from the court to file material under seal. A party who seeks to
26 maintain the confidentiality of its information must satisfy the requirements of Local Civil

1 Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this
2 requirement will result in the motion to seal being denied, in accordance with the strong
3 presumption of public access to the Court's files.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
6 party or non-party that designates information or items for protection under this agreement
7 must take care to limit any such designation to specific material that qualifies under the
8 appropriate standards. The designating party must designate for protection only those parts of
9 material, documents, items, or oral or written communications that qualify, so that other
10 portions of the material, documents, items, or communications for which protection is not
11 warranted are not swept unjustifiably within the ambit of this agreement.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
13 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
14 unnecessarily encumber or delay the case development process or to impose unnecessary
15 expenses and burdens on other parties) expose the designating party to sanctions.

16 If it comes to a designating party's attention that information or items that it
17 designated for protection do not qualify for protection, the designating party must promptly
18 notify all other parties that it is withdrawing the mistaken designation.

19 5.2 Manner and Timing of Designations. Except as otherwise provided in this
20 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
21 ordered, disclosure or discovery material that qualifies for protection under this agreement
22 must be clearly so designated before or when the material is disclosed or produced.

23 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
24 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
25 the designating party must affix the word "CONFIDENTIAL" or "Attorney's Eyes Only" to each
26

1 page that contains confidential material. If only a portion or portions of the material on a page
2 qualifies for protection, the producing party also must clearly identify the protected portion(s) (e.g.,
3 by making appropriate markings in the margins).

4 (b) Testimony given in deposition or in other pretrial proceedings: The parties
5 and any participating non-parties must identify on the record, during the deposition or other pretrial
6 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
7 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
8 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
9 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
10 at trial, the issue should be addressed during the pre-trial conference.

11 (c) Other tangible items: the producing party must affix in a prominent place
12 on the exterior of the container or containers in which the information or item is stored the word
13 “CONFIDENTIAL” or “Attorney’s Eyes Only.” If only a portion or portions of the information
14 or item warrant protection, the producing party, to the extent practicable, shall identify the
15 protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
17 designate qualified information or items does not, standing alone, waive the designating
18 party’s right to secure protection under this agreement for such material. Upon timely
19 correction of a designation, the receiving party must make reasonable efforts to ensure that
20 the material is treated in accordance with the provisions of this agreement. In the event that
21 any document that is subject to a claim of privilege or that is protected from discovery as
22 attorney work-product material is inadvertently produced, the party that received the
23 document shall destroy such document and all copies thereof or return the document together
24 with all copies of the document to the producing party promptly after it receives a written
25 notice from the producing party that the document was produced inadvertently.
26

1 5.4 Meet and Confer Requirement for “Attorney’s Eyes Only” designation. No
2 document will be designated as “Attorney’s Eyes Only” unless the parties first agree to that
3 designation. If, after informal negotiations, the parties cannot agree on the designation, the
4 parties will engage in a good faith effort to meet and confer, as defined by the Local Rules of
5 practice for civil proceedings before the United States District Court for the Western District
6 of Washington (“LCR”) 1(c)(6), to agree upon whether the “Attorney’s Eyes Only”
7 designation is appropriate for the document in question. If, after a good faith effort to meet
8 and confer, the parties are still unable to agree, the designating party will request a telephonic
9 motion pursuant to LCR 7(i) to resolve the dispute with the Court’s assistance.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
12 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
14 burdens, or a significant disruption or delay of the litigation, a party does not waive its right
15 to challenge a confidentiality designation by electing not to mount a challenge promptly after
16 the original designation is disclosed.

17 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
18 regarding confidential designations without court involvement. Any motion regarding
19 confidential designations or for a protective order must include a certification, in the motion
20 or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
21 conference with other affected parties in an effort to resolve the dispute without court action.
22 The certification must list the date, manner, and participants to the conference. A good faith
23 effort to confer requires a face-to-face meeting, a video conference, or a telephone
24 conference.

25 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
26 intervention, the designating party may file and serve a motion to retain confidentiality under

1 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
2 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and
3 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and
4 burdens on other parties) may expose the challenging party to sanctions. All parties shall
5 continue to maintain the material in question as confidential until the court rules on the
6 challenge.

7 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
8 OTHER LITIGATION

9 If a party is served with a subpoena or a court order issued in other litigation that
10 compels disclosure of any information or items designated in this action as
11 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” that party must:

12 (a) promptly notify the designating party in writing and include a copy of the
13 subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order to
15 issue in the other litigation that some or all of the material covered by the subpoena or order is
16 subject to this agreement. Such notification shall include a copy of this agreement; and

17 (c) cooperate with respect to all reasonable procedures sought to be pursued by
18 the designating party whose confidential material may be affected.

19 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
21 confidential material to any person or in any circumstance not authorized under this
22 agreement, the receiving party must immediately (a) notify in writing the designating party
23 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of
24 the protected material, (c) inform the person or persons to whom unauthorized disclosures
25 were made of all the terms of this agreement, and (d) request that such person or persons
26

1 execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as
2 Exhibit A.

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
6 provision is not intended to modify whatever procedure may be established in an e-discovery
7 order or agreement that provides for production without prior privilege review. The parties
8 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

9 9. NON-TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each
11 receiving party must return all confidential material to the producing party, including all
12 copies, extracts and summaries thereof. This section shall not apply to documents that,
13 although produced by one party, are lawfully within the rights of the receiving party to
14 retain, including, but not limited to, financial documents produced by one party for a
15 corporation owned, in part, by the other party. Alternatively, the parties may agree upon
16 appropriate methods of destruction.

17 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
18 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
19 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
20 work product, even if such materials contain confidential material.

21 The confidentiality obligations imposed by this agreement shall remain in effect until
22 a designating party agrees otherwise in writing or a court orders otherwise.

23 Nothing in this protective order will be construed to affect any decision of this Court
24 or the rights of the parties under the law with respect to access, possession, or ownership of
25 any thing that is subject to this protective order, or otherwise. Unless otherwise directed or
26 ordered by the Court, rulings on discovery matters or the application of the protective order

1 shall not be determinative of the substantive claims in this case. Unless otherwise directed or
2 ordered by the Court, rulings on discovery matters or the application of the protective order
3 shall not prohibit or otherwise terminate any rights regarding the substantive claims in this
4 case.

5
6 IT IS SO ORDERED.

7
8 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
9 documents in this proceeding shall not, for the purposes of this proceeding or any other
10 federal or state proceeding, constitute a waiver by the producing party of any privilege
11 applicable to those documents, including the attorney-client privilege, attorney work-product
12 protection, or any other privilege or protection recognized by law.

13
14 DATED: May 28, 2021

15
16
17 

18 MICHELLE L. PETERSON
19 United States Magistrate Judge
20
21
22
23
24
25
26

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under
5 penalty of perjury that I have read in its entirety and understand the Stipulated Protective
6 Order that was issued by the United States District Court for the Western District of
7 Washington on [date] in the case of *Integrative Health Institute PLLC et al. v. Schaffner et.*
8 *al.*, Case No. C20-1471-RAJ-MLP. I agree to comply with and to be bound by all the terms
9 of this Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
11 promise that I will not disclose in any manner any information or item that is subject to this
12 Stipulated Protective Order to any person or entity except in strict compliance with the
13 provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Western District of Washington in Seattle for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after termination of this
17 action.

18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____

21 Signature: _____
22
23
24
25
26